

Region 8 Congressional and Intergovernmental Weekly Report
For the Week Ending 3/18/16

1. Past Week's Happenings:

3/15/16 – RCL received a call from Representative Tipton's staff looking for information on a constituent inquiry about a NPDES stormwater penalty letter they received. NPDES Program prepared a response, which was sent 3/17/16.

3/17/16 – Call between R8 Superfund staff and Representative Perlmutter's staff regarding their request to review legislative language regarding the deed restrictions at Rocky Mountain Arsenal. EPA committed to continuing to work with the Representative's staff and CDPHE on this issue.

Roll-Outs/Notifications Sent this Week:

3/17/16 – GKM Stakeholders Alert and Notification Test

2. Next Week's Happenings:

3/24/16 – CFAC tour with Senator Bennet's, the mayor, a county commissioners and others in attendance.

Week of 3/21 - Informal meetings with Representative Tipton's staff to introduce her to the new EPA and State remedial project managers for the proposed Bonita Peak Mining District. Similar meeting with Senator Bennet's staff is tentative.

No rollouts planned.

3. Upcoming Hearings/Meetings:

- The Senate is in recess until April 4th.
- Tuesday March 22 @ 9:30 AM in Rayburn Room TBD – FY 2017 President's Budget (PB) - House Appropriations Interior Subcommittee Hearing – Administrator witness
- Tuesday March 22 @ 2:00 PM in Rayburn Room TBD - FY 2017 PB - House Energy and Commerce Hearing – Administrator witness
- Tuesday April 19 @ 10:00 AM in 406 Dirksen - FY 2017 PB – Senate Environment and Public Works Committee Hearing – Administrator witness
- Wednesday April 20 @ 10:00 AM in Dirksen 124 - FY 2017 PB - Senate Appropriations Interior Subcommittee Hearing – Administrator witness

4. Legislative Updates:

- RCRA Program will be sending another letter to UDEQ regarding concerns about H.B. 258.

- CO S15 was signed by the Governor: Rules for allowed Marijuana Pesticides. Requires that a Governor-designated State Agency clarify which pesticides may be used in the marijuana industry
- UT SB110 has passed both the Utah House and the Utah Senate: Proposal for Utah rule requiring a peer review process on CWA actions. Would allow permittees to initiate a peer review on the science underlying State actions, and would be binding on State actions. Would create significant inconsistencies with the requirements of the CWA. Region 8 has sent two letters to UDEQ outlying our concerns with this Bill.
- UT HB258 has passed both the Utah House and Utah Senate: Changes the definition of Solid Waste and would create significant inconsistencies with the requirements of the solid waste management program and could require us to pull the program. Region 8 has sent a letter to UDEQ outlying our concern with this Bill.
- *UT State Legislature is adjourned for FY16.*
- WY SF0028 was signed by the Governor: Carbon capture, storage and sequestration permits.
- WY HB0011 was signed by the Governor: Act extending authorization to participate in the energy producing states coalition.
- WY SF0001 was signed by the Governor: Footnote for WY DEQ as part of the state's spending bill: requires that no funds be spent on producing a state plan to implement the CPP. Does not prohibit expenditure of funds by DEQ to attend meetings and otherwise be informed as to any potential need to develop and submit a state plan.
- *WY State Legislature is adjourned for FY16.*
- HR 4470 passed the House: Safe Drinking Water Act Improved Compliance Awareness Act. Requires public notification of lead in drinking water

5. New or Outstanding Letters or Inquiries:

- **New letters** assigned to Region 8 for response: None!
- **Outstanding Request:** Letter from Representative Tipton regarding GKM. Formally assigned to EPR on Tuesday 3/8 for response. Routing through ECEJ.
- **Outstanding Request:** Senator Tester, 1/29/16 letter to Administrator McCarthy regarding CFAC. Formally assigned to EPR on Monday 2/29/16. Routing through EPR.
- **Outstanding Request:** Several GKM Citizen Letters.

6. Congressionals and Other Elected Officials in the News/on Social Media:

BOXER: LEAD-TAINTED WATER IS A DISASTER: Sen. Barbara Boxer will introduce a bill that would allow areas with lead-poisoned water to receive federal disaster assistance. Under the bill, a governor would ask for disaster assistance, and if approved, Federal Emergency Management Agency would immediately swing into action, followed by the departments of Health and Human Services, the Environmental Protection Agency and the Army Corps of Engineers. "It is critical that future Presidents do not have their hands tied because the definition of a disaster does not include lead contamination in drinking water," Boxer said in a statement. President Obama has twice rejected disaster requests from Michigan Gov. Rick Snyder because the law only covers natural disasters.

Chaffetz drops in on Flint: Oversight Chairman Jason Chaffetz visited Flint on Saturday (3/12), promising accountability for members of the government who allowed the crisis to happen, according to local news reports. Chaffetz toured a water treatment plant and spoke at an EPA open house. He told the public he wants to know "who knew what and when and what did they do about (the water situation)," adding the "system totally failed and people need to be held accountable," The Detroit Free Press reports. "This is the United States of America, we're not supposed to be acting like some third-world country, this should not happen here," he said, according to the Detroit News. Chaffetz was joined on the visit by Reps. Bill Huizenga, Tim Walberg, John Moolenaar, and Dan Kildee.



Jason Chaffetz
(@jasoninthehouse)

3/14/16, 1:47 PM

Flint water crisis: congressman says EPA is guilty of 'flat-out incompetence' | US news | The Guardian
theguardian.com/us-news/2016/m...

Wyo. governor stresses clean coal, renewables in energy strategy

Published: Wednesday, March 16, 2016

Wyoming Gov. Matt Mead (R) has called for more funding for clean coal research and a new emphasis on renewables, a shift from a previous strategy focused on fossil fuels.

He unveiled his updated energy strategy in Cheyenne amid a downturn in coal. Mead made his trademark call for more research into other economic uses for coal. He also called for more wind turbine manufacturing in the state. An initiative to expand foreign markets for natural gas and coal was dropped from the original 2013 version.

"The fact is, it's a doubling down on coal and a very good start on renewables," he said.

Aides stressed that the governor would not give up on coal exports, but acknowledged the change in the state's economic climate. The new initiatives are a response to public comments on energy and environment issues facing the state, said Nephi Cole, a policy adviser to the governor.

"We realize times do change, and they always do," Cole said. "The framework was designed to be flexible to respond to the times" (Benjamin Storrow, Casper [Wyo.] Star-Tribune, March 14). -- **CVK**

Senate passes FOIA reform bill during Sunshine Week

Kevin Bogardus, E&E reporter

Published: Wednesday, March 16, 2016

The Senate yesterday passed legislation to bolster the Freedom of Information Act.

The upper chamber approved S. 337, known as the "FOIA Improvement Act of 2016," by unanimous consent. Passage of the bill came after a lobbying push by several open-government advocates timed to coincide with this year's "Sunshine Week."

The bill would make several changes to the public records law, such as establishing a presumption of openness when federal agencies respond to FOIA requests, as well as banning the use of the law's "deliberative process" exemption for documents created 25 or more years ago. In addition, the legislation would create a single online portal for FOIA requests to all federal agencies and would give more authority and independence to the Office of Government Information Services, the federal government's FOIA watchdog.

The bill was approved in the Senate Judiciary Committee last year. In January, the House passed by voice vote similar legislation to strengthen FOIA (E&E Daily, Jan. 12).

Similar legislation amending FOIA passed separately in both chambers of Congress in 2014. Nevertheless, lawmakers were never able to finalize the bill and send it to President Obama for him to sign it into law.

Supporters of FOIA reform cheered passage of the bill in the Senate.

"An open and transparent government is paramount to a healthy democracy, and today's vote sends a clear message that the American people have a fundamental right to know what their government is doing," Sen. John Cornyn (R-Texas), one of the bill's sponsors, said in a statement yesterday.

Sen. Patrick Leahy (D-Vt.), another bill sponsor, urged the House to take up the senators' legislation.

"The Senate unanimously passed this legislation last Congress, but the House failed to act. Sen. Cornyn and I moved quickly to reintroduce our legislation last year, and I am glad the Senate has once again passed it with unanimous support. The House must act to pass the FOIA Improvement Act so that it can be enacted this year," Leahy said.

Passage of the Senate bill came after a concerted lobbying campaign calling for its approval. On Monday, more than 40 groups and individuals sent a letter to Cornyn, Leahy and Sen. Chuck Grassley (R-Iowa), another bill sponsor, calling for a vote on the legislation.

Transparency supporters applauded passage of the bill and said the House and the Senate should reconcile their two measures that strengthen FOIA before the law's 50th anniversary this coming July 4.

"The House and Senate should quickly work through their differences and send the bill to the President," Rick Blum, director of the Sunshine in Government Initiative, said in a statement. "The public deserves a stronger and more efficient FOIA before the Act turns 50 in a few months."

Republicans roll out legislation to ban agency deference

Robin Bravender, E&E reporter

Published: Thursday, March 17, 2016

Republican lawmakers on both sides of Capitol Hill today introduced a bill to end courts' controversial practice of deferring to agencies' expertise on rulemaking.

Sen. James Lankford (R-Okla.) announced he's co-sponsoring the "Separation of Powers Restoration Act," which would amend federal law to "clarify that courts may not defer to an agency interpretation of a statutory provision or rule," Lankford said this morning at a Senate hearing about courts' deference to government agencies.

If enacted, the legislation could have a sweeping impact on environmental law. Under the so-called *Chevron* doctrine often cited in cases challenging environmental rules, judges defer to agencies' interpretations of the law if Congress was silent or ambiguous on an issue.

Proponents of the doctrine, dating to the 1984 Supreme Court decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, contend that agency experts are better suited than courts to make complicated regulatory decisions and that judges should defer to their expertise as long as they aren't clearly defying the intent of Congress.

But critics of the doctrine warn that government agencies have abused that deference by enacting policies that go outside the bounds of the law.

"*Chevron* deference has fundamentally altered how agencies regulate," Lankford said today. "Instead of simply carrying out the directives of Congress, agencies can seek out ambiguities in the law so they can address problems as they see fit."

As an example, Lankford cited U.S. EPA's Clean Water Act jurisdiction rule that's currently tied up in the courts. "Emboldened by *Chevron* deference, EPA expanded the Clean Water Act beyond anything contemplated by the enacting Congress."

Lankford is co-sponsoring the legislation with Republican Sens. Orrin Hatch and Mike Lee of Utah, Thom Tillis of North Carolina, and Chuck Grassley of Iowa. Reps. Bob Goodlatte (R-Va.) and John Ratcliffe (R-Texas) are introducing companion legislation in the House, according to Lankford's office.

The legislation is certain to come under fire from Democratic lawmakers and environmentalists, who argue that agency officials are in the best position to set government policies.

"This is a really quite heated topic here in Washington, D.C.," Sen. Heidi Heitkamp (D-N.D.) said this morning at the Senate hearing.

"*Chevron*, in my opinion, is not a free pass for an agency to do as it pleases," she added, noting that in a recent Supreme Court case over an EPA mercury rule, the justices struck down the regulation after finding that the agency hadn't appropriately considered costs.

"Replacing *Chevron* is something I approach with great trepidation," Heitkamp said, wondering whether "we have enough courts" to evaluate all the facts in regulatory disputes. In order to clear up confusion over Congress' intent, she said, "The legislative branch needs to do a better job when we write laws."